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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 U.S. BANK N.A.,

11 Plaintiff,

12 v.

13 CHARLES G. ALLEN and KAZUMI
14 ALLEN, husband and wife; WOODSIDE
15 HOMEOWNERS CONDOMINIUM
16 ASSOCIATION, a Washington association,
PORTFOLIO RECOVERY ASSOCIATES,
LLC, a Delaware limited liability company,
and JOHN or JANE DOES 1-5,

17 Defendants.

Case No. 2:15-cv-01006

COMPLAINT FOR DECLARATORY
RELIEF, EQUITABLE LIEN,
EQUITABLE SUBROGATION, AND
QUIET TITLE

18 **COMES NOW** U.S. BANK N.A. (“U.S. Bank”), by and through its counsel of
19 record, Fidelity National Law Group and Erin M. Stines, and hereby alleges its
20 complaint against the Defendants as follows:

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PARTIES

1.1 Plaintiff is a national banking association, duly licensed and authorized to do business in the State of Washington.

1.2 At all relevant times, Defendants Charles G. Allen and Kazumi Allen were married as husband and wife having an interest in real property located at 111 NW Columbia Drive, #A-1, Oak Harbor, Washington 98277, and which is legally described as follows:

UNIT 101, BUILDING C, WOODSIDE CONDOMINIUM, PHASE II, ACCORDING TO AMENDED DECLARATION THEREOF RECORDED OCTOBER 20, 1983, UNDER AUDITOR'S FILE NO. 416509, RECORDS OF ISLAND COUNTY, WASHINGTON; BEING A PORTION OF ELLMORE DONATION LAND CLAIM IN SECTIONS 34 AND 35, TOWNSHIP 33 NORTH, RANGE 1 EAST OF THE WILLAMETTE MERIDIAN.

SITUATED IN ISLAND COUNTY, WASHINGTON.

("Subject Property")

1.3 Defendant Woodside Homeowners Condominium Association is a Washington association that has an interest in the Subject Property pursuant to Claim of Lien recorded under Island County Auditor's File No. 4326325 on October 31, 2012.

1.4 Defendant Select Portfolio Recovery Associates, LLC ("Select Portfolio") is a Delaware limited liability company that regularly attempts to collect defaulted third party debts from Washington consumers.

1.5 Select Portfolio may claim an interest in the Subject Property pursuant to Judgment filed under Island County Superior Court Cause No. 12-2-00656-8 on August 8, 2012.

1 3.4 As a condition of the Loan, U.S. Bank required its Loan proceeds to pay
2 off an existing Alaska USA Federal Credit Union loan made to Charles Allen on
3 November 2, 2005, in the original principle amount of \$191,900.00 (“Alaska USA
4 Loan”).

5 3.5 The Alaska USA Loan secured the Subject Property pursuant to a Deed
6 of Trust recorded in a first lien position under Island County Auditor’s File No.
7 4154356 on November 16, 2005. A true and correct copy of the Alaska USA Deed of
8 Trust is filed herewith as **Exhibit C**.

9 3.6 In connection with U.S. Bank’s Loan to Defendants, a payoff in the
10 amount of \$185,035.28 was paid by U.S. Bank to satisfy the Alaska USA Loan.

11 3.7 Once U.S. Bank paid off the Alaska USA Loan in full, a Full
12 Reconveyance of the Alaska USA Deed of Trust was recorded under Island County
13 Auditor’s File No. 4278219 on August 3, 2010. A true and correct copy of the Full
14 Reconveyance is filed herewith as **Exhibit D**.

15 3.8 The parties to the Loan intended to record the Deed of Trust as a first
16 position lien; superior to all other interests in the Subject Property.

17 3.9 Inadvertently, the Deed of Trust was not recorded in 2010 as the parties
18 intended.

19 3.10 To fully encumber the Subject Property, the Deed of Trust should have
20 been signed by both Charles and Kazumi Allen, as Charles and Kazumi Allen had a
21 community property interest in the Subject Property at the time the Loan was
22 originated.

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1 3.11 Inadvertently, Kazumi Allen did not sign Note and Deed of Trust at
2 closing.

3 3.12 The loan is in default and U.S. Bank seeks to reform the Deed of Trust
4 to encumber both Charles and Kazumi Allen's ownership interest in the Subject
5 Property.

6 3.13 More than two years after the Deed of Trust recorded, Woodside
7 Homeowners Condominium Association filed a lien against the Subject Property.

8 3.14 More than two years after the Deed of Trust recorded, Defendant Select
9 Portfolio filed a Judgment filed under Island County Cause No. 12-2-00656-8.

10 3.15 The Deed of Trust is senior to and prior in time to these aforementioned
11 Defendants and any alleged interest in the Subject Property.

12 3.16 U.S. Bank seeks a declaratory judgment and quiet title placing its Loan
13 in a first-lien position on the Subject Property.

14 3.17 U.S. Bank seeks a declaratory judgment decreeing that the Deed of
15 Trust is reformed to include Kazumi Allen's signature and interest as was originally
16 intended by the parties when U.S. Bank originated the Loan.

17 3.18 U.S. Bank's complaint is based on the principles of equity and equitable
18 subrogation, full pay off of Alaska USA's Deed of Trust, and state law governing
19 priority of mortgages over condominium dues and assessments and later filed
20 judgments.

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CLAIMS

CLAIM ONE - DECLARATORY RELIEF

As to All Defendants

4.1 Plaintiff re-alleges the matters set forth above.

4.2 In consideration for the Loan, the parties intended for a first position Deed of Trust to encumber the Subject Property.

4.3 To fully encumber the Subject Property, the Deed of Trust should have been signed by both Charles Allen and Kazumi Allen, as Charles Allen and Kazumi Allen had a community property interest in the Subject Property at the time the Loan was originated.

4.4 Accordingly, U.S. Bank is entitled to a declaratory judgment decreeing that the Deed of Trust is reformed to include Kazumi Allen's signature and interest as was originally intended by the parties when U.S. Bank originated the Loan.

4.5 Furthermore, to fully encumber the Subject Property and to fulfill the parties' agreements and intentions, the Deed of Trust should have been recorded on June 28, 2010, with the Island County Auditor.

4.6 Accordingly, U.S. Bank is entitled to a declaratory judgment, decreeing that the Deed of Trust is a valid, subsisting first position lien upon the Subject Property, affecting title to the Subject Property, and any and all interests, if any, of Defendants named herein as of June 28, 2010.

4.7 No third party will be prejudiced if the Court grants the declaratory relief requested herein by U.S. Bank.

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CLAIM TWO – EQUITABLE SUBROGATION

As to All Defendants

4.1 Plaintiff re-alleges the matters set forth above.

4.2 Pursuant to the doctrine of equitable subrogation, although U.S. Bank's Deed of Trust was not signed by Kazumi Allen and not recorded at the time the Loan originated, U.S. Bank nonetheless assumes the lien priority interest of any and all liens it paid off with the proceeds of its Loan when it originated its Loan.

4.3 Accordingly, U.S. Bank's Deed of Trust is senior to any and all interests, if any, of the Defendants named herein to the extent U.S. Bank's Loan proceeds were used to pay and satisfy senior liens – namely the Alaska USA Deed of Trust – at the time U.S. Bank made its Loan.

4.4 Accordingly, U.S. Bank is senior to all Defendants named herein for any and all interests, costs, fees, and charges that would be recoverable and secured by the terms of the Deed of Trust.

CLAIM THREE – EQUITABLE LIEN

As to All Defendants

5.1 Plaintiff re-alleges the matters set forth above.

5.2 In the alternative, U.S. Bank requests the Court determine it is entitled to equitable lien against the Subject Property, as of the date Deed of Trust was recorded.

5.3 In consideration for the Loan, the parties intended to fully encumber the Subject Property with the Deed of Trust and the parties intended to encumber the Subject Property in a first lien position.

1 5.4 U.S. Bank is thereby entitled to an equitable lien on the Subject
2 Property in the original principle amount of the Loan, together with interest, attorney
3 fees and costs accrued from the date the Loan originated and the Deed of Trust was
4 signed by Charles Allen on June 28, 2010.

5 **CLAIM FOUR – QUIET TITLE**

6 **As to All Defendants**

7 6.1 Plaintiff re-alleges the matters set forth above.

8 6.2 Consistent with the parties' original intentions to fully encumber the
9 Subject Property and the interests of Charles Allen and Kazumi Allen.

10 6.3 Consistent with the parties' original intentions the Deed of Trust should
11 be deemed a valid and subsisting lien against the Subject Property as of the date it
12 was originally executed by Charles Allen on June 28, 2010.

13 6.4 U.S. Bank's lien on the Subject Property plus all associated interests,
14 costs, fees, and charges that would be recoverable and secured by the terms of the
15 Deed of Trust is therefore superior to any and all interests, if any, of the Defendants
16 named herein and an order quieting title in favor of U.S. Bank should be entered.

17 **WHEREFORE** Plaintiff prays for judgment against Defendants, jointly and
18 severally, as follows:

19 1. That Defendants' interests in the Subject Property are deemed to be
20 subject to the Deed of Trust;

21 2. For U.S. Bank's attorneys' fees/costs incurred to reform the Deed of
22 Trust and to establish its first lien position relative to Defendants' interests; and

23 3. For such further relief as the Court may deem just and equitable.

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N.A.**

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